

not be disputed, that, as against Jones, his answer to the bill of Albert and wife, would have concluded him, unless he had relied upon the statute of frauds; and there would have been a decree enforcing the agreement set up in the bill, and confessed in the answer.

But does it follow, that if these parties, Winn and Ross, claiming, either under the deed of trust, or as trustees in insolvency, had been parties in that cause, the answer of Jones could have been read against them?

In the case of *Jones vs. Hardesty et al.*, 10 Gill & Johns., 404, it was decided by the Court of Appeals, contrary to the cases of *Field vs. Holland*, 6 Cranch, 8, and *Osborn vs. The United States Bank*, 9 Wheaton, 378; that the answer of one defendant in chancery is not evidence against a co-defendant claiming title under the former; for the reason, that the party against whom the answer is proposed to be read, would be deprived of the benefit of a cross examination. If, therefore, Winn and Ross had been parties defendants to the bill of Albert and wife, with Jones, his answer could not have been read against them, and the complainants, if they wished to have the benefit of his testimony, would have been required to examine him as a witness.

But conceding that the answer could be read *as evidence*, and it certainly can have no greater effect than evidence, will it be sufficient to remove the bar of the statute of frauds? It has been shown that an answer admitting a parol agreement within the statute will not prevent the party answering, from relying upon the statute. Jones himself, notwithstanding that answer might have taken shelter under the provisions of the statute, and if so, can it be successfully argued, that other parties, though claiming under him, may not avail themselves of the same protection? The answer if it can be read, then, is evidence, but evidence of what? Why of a parol agreement relating to land, and void by the statute of frauds.

The Court of Appeals in the case of *Jones vs. Sluby*, 5 Har. & Johns., 381, 382, say, speaking of the effect of an answer when responsive to the bill, "that though uncontradicted it can-